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10/621,768	07/16/2003	Ernest W. Moody	MOODY 36	1705

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EXAMINER	
COLLINS, DOLORES R	
ART UNIT	**PAPER NUMBER**
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Group 3700

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/621,768
Filing Date: July 16, 2003
Appellant(s): MOODY, ERNEST W.

John Edward Roethel
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/12/05.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-4 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,419,578	Moody et al.	7,2002
6,443,456	Gajor	9-2002

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,419,578 in view of Gajor (456). The patented and the pending claims set forth the same invention of substantially the same scope except the invention patented claims 1-24 lack the parlay feature. However, it is well known in the art to use a parlay feature in game play to provide players with additional wagering options and this feature is shown by Gajor.

In view of Gajor, it would have been obvious to one of ordinary skill in the art to modify the patented method of play of claims 1-24 by including a parlay feature for game play in order to increase the potential payout.

(11) Response to Argument

Appellant argues that the language of patent conveys a different game from the current application. Examiner feels that although the language of the patent to moody et al. is not the same, his claims are broad enough to encompass the limitations of applicant's current claim. In applicant's current claims, when a player receives his initial five cards he has the option of holding none or up to all cards as part of game play. In selecting all cards as cards to be held, if those initial cards is a winning hand, the player will be basing any bonus play or parlaying on his initial hand. Hence the parlay event is based on the preselected arrangement/initial hand of cards.

Appellant then argues that reliance on Gajor for supported teachings indicates a total admittance of shortcomings of the base reference. Examiner's reliance on the reference to Gajor is an effort to solidify implicit teachings of the base reference. The reference to Moody (578) teaches, in claim 1, that players have the option to use a second pay table if the player has a preselected hand of cards. Moody (578) further teaches that the second pay table has higher awards (col. 4, lines 25-67).

In conclusion, Appellant argues the meaning of the term 'parlay' as it applies to the reference to Gajor. Examiner feels that based on the definition of 'parlay' in gaming, there is no misuse of the application of the term.

Examiner feels that claims 1-4 have been properly rejected.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Examiner D. Collins

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April 4, 2005

Greg Vidovich
SPE

Conferee
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